CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 11TH APRIL, 2023

SUIT NO. D18/07/22

THE REPUBLIC

VRS

EDMUND COBBOLD

JUDGMENT

The accused person is before this court on two counts of robbery contrary to ***Section 149 of the Criminal Offences Act, 1960 (Act 29)***. The particulars of offence for count one are that on the 5th day of May, 2021 at Dawhenya in the Ningo Prampram District and within the jurisdiction of this court, he and another who is now at large, to overcome the resistance of William Ofori, threatened him with cutlass and knife and succeeded in stealing his Samsung Galaxy mobile phone valued at six hundred Ghana cedis (Ghs 600), one iphone valued at one thousand, two hundred Ghana cedis (Ghs 1,200), one infinix mobile phone valued at seven hundred Ghana cedis (Ghs 700), one wrist watch valued at two hundred Ghana cedis (Ghs 200), one HP computer laptop valued at two thousand, two hundred Ghana cedis (Ghs 2,200), an amount of eight hundred and seventy Ghana cedis (Ghs 870), his mobile phone wallet and cash the sum of thirteen thousand Ghana cedis (Ghs 13,000), all to a total sum of eighteen thousand, seven hundred seventy (Ghs 18,770).

The particulars of offence for count two are that at the aforementioned date and place within the jurisdiction of the court, he and one other, now at large, to overcome the resistance of Leticia Ofori threatened to kill her with a cutlass and knife and succeeded in stealing her one infinix mobile phone valued at seven hundred Ghana cedis (Ghs 700), one iphone valued at one thousand, two hundred Ghana cedis (Ghs 1,200) and

cash of one thousand Ghana cedis (Ghs 1,000) all to a total value of two thousand, nine hundred Ghana cedis (Ghs 2,900).

The accused person pleaded not guilty. By that plea, he was shielded by the constitutional provision that he was innocent until proven guilty. In ***Gligah & Atiso v The Republic [2010] SCGLR 870 @ 879*** the court held that *"Under Article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."*

In proof of its case, prosecution called four witnesses.

EVIDENCE OF PW1

According to PW1, on the 5th of May, 2021 at 2:00 am, whilst he was asleep, two men holding cutlass and a knife entered his room and ordered he and his wife to lay down and further ordered him to keep quiet. That he was in the room with his wife, four year old daughter and nine month old baby boy.

That the robbers took his Samsung galaxy mobile phone, iphone, hp laptop computer, infinix mobile phone, wrist watch and cash the sum of thirty thousand Ghana cedis (Ghs 13,000). That the robbers collected his MOMO code and transferred eight hundred and seventy Ghana cedis (Ghs 870) on his MOMO wallet to another wallet. That the

robbers then collected his car keys, locked them in the bedroom and left. They were later rescued with the help of neighbours.

He continued that he later realized the robbers gained ingress into the house by first cutting the metal barusters on the fence wall and then cutting the burglar proof in the sitting room window. That the investigator later called him that one Sylvester Adofo Kyei who received the MOMO had been arrested. That he went to the police station but realized that the person arrested was not part of the robbers. That the accused person was later arrested and he was able to identify him at an identification parade as one of those who robbed him on the 5th of May, 2021.

EVIDENCE OF PW2

PW2's testimony is that she is the wife of PW1. That she was with him in their bedroom when the robbery occurred. That she observed two men entering their bedroom with a knife and cutlass. That when she attempted to shout but one of them signaled her to keep quiet and she did. That the robbers ransacked their room and made away with her infinix mobile phone, iphone and cash of one thousand Ghana cedis (Ghs 1,000).

That PW1 was asleep and initially did not see the robbers. That when he did, the robbers asked him to shut up and lay down. That before the robbers left, one of them made an attempt to hurt PW1. PW1 later told her after the robbers left that they had taken an amount of thirteen thousand Ghana cedis (Ghs 13,000) which belonged to him.

She continued that PW1 reported to the police after they were rescued by neighbours. That the police arrested one Sylvester Adofo Kyei who received the amount which was transferred from PW1's phone. However, at the police station, she realized that the said Sylvester Adofo Kyei was not part of the robbers.

That in November, 2021, the police called to say they had arrested one of the robbers and at an identification parade held on the 3rd of November, 2021, she was able to identify the accused person among eight men who formed the parade.

EVIDENCE OF PW3

According to PW3, in March, 2021, a friend of the accused by name Gideon, whilst in the company of the accused, offered him a Samsung mobile phone for sale. That he purchased it at a cost of one thousand, seven hundred Ghana cedis (Ghs 1,700). He showed it to a friend who informed him that the phone was not of top quality and so he returned it to the said Gideon. Gideon then told him that he had used the money.

That he kept chasing the said Gideon for his money. On the 5th of May, 2021, Gideon sent him eight hundred and seventy Ghana cedis (Ghs 870) in two tranches; eight hundred Ghana cedis (Ghs 800) and seventy Ghana cedis (Ghs 70) via mobile money through telephone number 0554740019 at 5:39 am and 12:48 am. That on the 30th of July, 2021, he was arrested by the police for having received the money from PW1's momo account.

That the police informed him that the robbery was carried out by two people and since the accused person is always in the company of Gideon and Gideon transferred the money from PW1's phone to him, he assisted the police to arrest the accused so the victims could identify him.

THE EVIDENCE OF PW4

His testimony is that after PW1 reported the case to the police, he went with PW1 to the scene. He observed that the robbers cut a portion of the metal on the fence wall and

used same as access to the complainant's house. That they further damaged portion of the burglar proof of the hall window and used same as access to the hall. The robbers then entered the bedroom because it was not locked.

He observed that the robbers ransacked the room of PW1 and PW2. He took photographs. That PW1 made him aware that his assailants took his mobile money code and he suspects they may have transferred money from it.

That upon the orders of the Prampram District Court, he obtained the mobile money transaction details of PW1's account and realized that an amount of eight hundred and seventy Ghana cedis (Ghs 870) was transferred to PW3's mobile number 0241981311 from PW1's phone. That he arrested PW3 who indicated that one Gideon had sent him the money as payment for a debt.
Further that all attempts to arrest the said Gideon including publications on social media via a court order failed. However, intelligence revealed that Gideon committed the offence with the accused person. Accused person was arrested at his hideout at Baatsona.

That PW1 and PW2 had indicated that they could identify the robbers as they had seen their faces and so an identification parade was carried out. PW1 first identified the accused person. Afterwards, the parade officer changed the position of the accused and also made him to change his dress, yet PW2 was able to identify him.

PW4 tendered in evidence the investigation caution, further investigation caution and charge statement of the accused person as EXHIBIT A, A1 and B respectively. EXHIBIT C and C as the application and the order from the Prampram District Court directed at MTN to disclose the mobile money transaction details of PW1, EXHIBIT D as the mobile

money transaction details of PW1, E and E as cut burglar proof and window of PW1 and PW2, EXHIBIT F as a cross section of the people who formed the parade, F1 and F2 as PW1 and PW2 identifying the accused person, EXHIBIT G and G1 as an identification parade report

Prior to proceeding into the merits of the case, the prosecution must first prove the identity of the accused person. This is because learned counsel for the accused person's line of cross examination was primarily based on the fact that accused person was not the one who committed the crime.

In ***Ibrahim Razak v. The Republic [2012] 50 GMJ 139 SC @ 154-155*** the court regarding proof of identity of an accused held that "*It may also be proved or disproved not only by direct testimony, or opinion evidence, but presumptively by similarity or dissimilarity of personal characteristics; e.g. age, height, size, hair, complexion, voice, handwriting, manner, dress, distinctive marks, faculties or peculiarities including blood group, as well as of residence, occupation, family relationship, education, travel, religion, knowledge of particular people, places, or facts and other details of personal history. Thus it is fair and reasonable to say that the modes of identifying the perpetrators of a crime vary and holding an identification parade may be one of the acceptable modes. Another may be by proof of personal characteristics or peculiarities like the height of the person given by the oral evidence by prosecution witnesses on oath in court.*"

In the case of ***Dogbe v. The Republic, Atta Bedu J***, stated thus "in criminal trials, the identity of the accused person as the person who committed the crime might be proved either by direct testimony or circumstantial evidence of other relevant facts from which it might be inferred by the Court''.

The testimony of PW1 and PW2 is that they saw accused person's face on the day of the incident and were able to identify him at the police station when he was arrested. PW4's evidence is that the identification parade was conducted first by having PW1 come in to identify the accused person who was among a group of eight people.

Later, accused person's dress was changed and the position where he stood was also changed. PW2 came in and identified the very same person whom her husband PW1 had identified as the accused person. According to PW2, PW1 had used a different door to exit after his identification and so the two of them did not have an opportunity to communicate.

Regulation 195 of the Ghana Police Service guides the conduct of identification parades. ***The Ghana Police regulation 195*** recommends a minimum of eight persons in an identification parade. This regulation for the conduct of identification parades accords with the guidelines in the **English case of *R v Turnbull (1977) Q.B.224.***

The regulation further recommends that as far as possible the participants should be of similar age, height, general appearance and class of life as the accused. From the evidence on record, PW.1 and PW. 2, were kept in a room away from where the parade took place and called one after the other to identify their assailant. Upon completion of the exercise, PW.1 did not return to the room where PW.2 was waiting. He exited by a different door. I find from the evidence that the identification parade was in accordance with the prescribed regulation. (See page ***306 of Criminal Procedure in Ghana by A.N.E.Amissah, 1982***).

EXHIBIT F, F1 and F2 were tendered in as proof of the said identification parade. In EXHIBIT F1, accused was standing by a wall close to an entrance or exit with other

persons similar in age to him. He was wearing a multi coloured T shirt and multi coloured shorts. PW1 could be seen pointing him out. In EXHIBIT F2, accused was standing by a wardrobe and wearing a long black male dress that covered him from neck to toe. PW2 could be seen pointing him out. The exhibits bear out the claim of PW4 as to how the identification parade was conducted and yet, PW1 and PW2 had been able to make the accused person out.

PW1 and PW2 are the victims of this offence. The incident happened in their home. According to PW2, she was not asleep as she was breastfeeding her baby at the time the accused person and another entered. According to them, the incident happened around 2:am and the lights in the room were on. The accused persons were not masked and PW2 who was awake was the first to see them. That is an indication that visibility was clear.

PW1 further testified that the incident occurred within 45 minutes whilst according to PW2, it was within 25 minutes. Even if I am to take the least of these, 20 minutes is more than enough for a person to have a good look at another; even in circumstances when the other had placed the one in a state of fear. PW2 had answered that even though she was afraid, she had had a good look at them because she was holding on to her baby whom she was up breastfeeding and the room was lit.

PW1 and PW2 further indicated that the accused person and his accomplice spoke to them and accused even gave them information about the safety of their children. That would provide anyone with a further opportunity to take a look at his assailors. PW1 identified the height of the accused and his accomplice as about his own height. I find that that is true. I observed both PW1 and the accused person and they are indeed about

the same height. Again, PW1 was clear as to the fact that it is the accused person who was holding on to the knife.

PW1 under cross examination by learned counsel for the accused at page 27 of the record of proceedings had answered:

Q: *You see, you did not see accused person among those who raided you. I suggest to you.*

A: My lord, yes, I saw him. What made him vividly to remember his face was that at a point in time, he also started picking my trousers and taking things from my pocket and other things and the other person gave him two hot slaps for which he watched him but did not retaliate it. Also when they were about leaving, he told me specifically that my children are in the room and they did not touch them.

PW2 had answered under cross examination by learned counsel for the accused person:

Q: Which among you got up to take monies allegedly for the robbers or the alleged robbers located the money themselves?

A: They did not allow us to get up from the bed. I was seated and holding my baby and so after they picked up our laptops and phones, the other guy was the one taking the items and accused person was standing on us with a knife. I had placed the charger of my iPhone on a table and so when he saw the charger, he asked me if I had an iPhone laptop and I said no and he threatened to slap me and so quickly, I told him that the phone was in the wardrobe and so he went for it. It was in a handbag and so he took out and placed the bag on the bed and took out the phone.

The police had first arrested PW3. PW1 and PW2 had indicated to the police that they could identify their assailant if they see them in person. Upon an earlier identification parade, they indicated that PW3 was not part of the persons who had robbed them.

Months later, when they were called in to identify the accused person, they had both pointed to the same person even in the circumstances where the dress and standing position of the accused in the parade was changed.

I am convinced that prosecution has established the identity of the accused person in this case. I would now proceed into the merits of the case.

Section 173 of the Criminal and other Offences Procedure Code, 1960 (Act 30) provides that; "If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

In deciding whether or not a case is made out against the accused sufficiently to require him to make a defence, the Court must make certain considerations. According to the Supreme Court in the case ***of Asamoah & Anor. v. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC*** speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

a) There had been no evidence to prove an essential element in the crime
b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it.

d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the cases of ***The State v. Ali Kassena [1962] 1 GLR 144*** in which the ***Practice Direction issued by the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ)*** was approved of, *Moshie Alias Adama v The Republic [1977] 1 GLR 186, Kofi alias Buffalo v. The Republic [1987-88]* –**Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068**).

The offence of robbery is provided for in ***Section 149 of the Criminal Offences Act, 1960 (Act 29).*** It is however defined by ***section 150*** of the same Act to be:

"**Section 150 – Definition of Robbery**

A person who steals a thing is guilty of robbery if in and for the purpose of stealing the thing, he uses any force or causes any harm to any person, or if he uses any threat or criminal assault or harm to any person, with intent thereby to prevent or overcome the resistance of that or of other person to the stealing of the thing."

A person who steals a thing commits robbery

a) If in and for the purpose of stealing the thing, the person uses force or causes harm to any other person, or
b) If that person uses a threat or criminal assault or harm to any other person, with intent to prevent or overcome resistance of the other person to the stealing of the thing.
c) The thing stolen must be in the presence of the person threatened.

In the case ***of Behome v. The Republic [1979] GLR 112***, the court held that "one is only guilty of robbery if in stealing a thing, he used any force or caused any harm or used any threat of criminal assault with the intent thereby to prevent or overcome the resistance of his victims to the stealing of the thing''.

Thus prosecution, in the circumstances of this case, in order to establish a prima facie case on count one and two must prove that;

1. The accused person stole PW1's Samsung Galaxy mobile phone, iphone, infinix mobile phone, , one wrist watch, an HP computer laptop, an amount of eight hundred seventy Ghana cedis (Ghs 870), mobile phone wallet and cash the sum of thirteen thousand Ghana cedis (Ghs 13,000).
2. The accused person stole PW2's infinix mobile phone, iphone and cash of one thousand Ghana cedis (Ghs 1,000).
3. That in stealing the said items, by the use of a cutlass and knife, he threatened criminal assault on PW1 and PW2.
4. That his intention of using the threat was to prevent or overcome their resistance to the stealing of the items.

Learned counsel for the accused person in cross examining PW1, had vigorously questioned him on the amount of thirteen thousand Ghana cedis (Ghs 13,000). Although PW1 could not provide proof of same, it does not adversely affect the evidence of prosecution. Save for the money, cross examination did not challenge all the other items mentioned. Particularly, the evidence that accused person and his accomplice had transferred money from PW1's Mobile money account after taking his phone and demanding his pin. PW3 was the recipient of the said money and Exhibit D,

which is the mobile money transaction details of PW1 indicate clearly that PW1's account sent money to PW3's account.

In ***Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297*** it was held in holding number one of the headnotes that "the evaluation of evidence in a criminal trial involving a serious offence such as robbery, as in the instant case, should not be based on the quantity of witnesses called in proof of the case of either the prosecution or the defence but on the quality of the evidence given by the witnesses.

The important thing to consider was whether the prosecution witnesses, who had given evidence in the case, had testified upon what was relevant and material in terms of ***Section 51(1) and (2) of the Evidence Act, 1975 (NRCD 323)***. *If their evidence was relevant and material in establishing the necessary ingredients of the offences charged, then the prosecution must be deemed to have discharged the burden of proof which lay upon it* (emphasis mine)."

At the close of prosecution's case, I find that they have established all the relevant elements of the offence of robbery as contained in count one and count two against the accused person. The evidence has not been discredited in anyway under cross examination, the evidence is reliable such that a court can safely convict on same and the evidence lends itself to one explanation; the prima facie guilt of the accused person. Consequently, I hereby determine that prosecution has established a prima facie case against the accused person on both counts. He is hereby called upon to open his case.

Denning J (as he then was) in the celebrated case of ***Miller v. Minister of Pensions [1947] 1 All ER 372 at 373*** held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a

prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of ***Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J 32***

Accused person was called upon to open his defence. An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. Where he is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See ***Bruce-Konuah v. The Republic [1967] GLR 611*** and ***Section 11(2) and (3) of NRCD 323***.
In arriving at whether an accused has raised a reasonable doubt, the court must first consider whether his explanation is acceptable i.e whether it believes the explanation given by the accused. If it does not, it must proceed to find out whether the explanation by the accused is reasonably probable. If that fails, then thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused.

In any of these instances, the court must acquit and discharge the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of ***Bediako v. The State [1963] 1 GLR 48***.

In his evidence in chief, accused person denied the offence. According to him, he was engaged in an altercation with a certain man which drew bystanders to come around. A police patrol team came and arrested both of them.

That he was kept in the cells for 3-4 days and then taken to the Dawhenya police station where the CID took his statement and told him to provide the details of the whereabouts of one Gideon who has been engaged in a robbery or else he would add

him as an accomplice. That he denied committing any offence. He was shown a picture of the said Gideon and he identified him and told the police he could assist them to find him. However, the police failed to take him around so he could show them where the said Gideon was.

That after about four days, an identification parade was organized and it was not properly done. The police did not put forward men of the same height, complexion or dress as him. They merely placed him in a position where PW1 could easily identify him. That he was made to change his cloth and PW2 also came in to identify him. That he issued a further statement after the identification and said the identification was a mistake. That the identification was a sham.

He continued that even though he knows Gideon, he did not commit any offence with him and more so, in the month of May, 2021 when the offence was committed, he did not set eyes on the said Gideon. That he had never visited Dawhenya prior to his arrest and so had never set foot in the house of PW1 and PW2. That he goes home to his wife and child on a daily basis.

That none of the items allegedly stolen were found on him and he knows nothing about the offence. That he was arrested on the Spintex road not because he was in hiding there but because that is where he goes to sell second hand clothes.

In his investigation caution statement, accused person had said one Gideon was his friend and he has known him for two years. That they have been meeting at Old Fadama and also met at Nhyiraba spot on the Spintex road. That he has not committed any offence with the said Gideon who could be seen at Nhyiraba Kojo spot.

In his further statement to the police which was given two days after his investigation caution statement, he said even though he had been identified by a man and a woman

during the identification parade, he denied committing any offence and asked the woman questions which she could not answer.

DW1's evidence is that the accused person is her husband and they have been married for five years and have one child. That although they live at Fadama, the accused person goes to work at Spintex and always returns home.

That she became alarmed when the accused person did not return home one day in October, 2021. Accused called her the next day and indicated that he had been arrested by the police. That he spent 3 or 4 days at Baatsona police station and was then transferred to Dawhenya police station.

That the CID told her upon enquiry that accused person was arrested because he knew the whereabouts of one Gideon who was being wanted by the police.

Accused person closed his case after this. In deciding whether or not the accused person has raised a reasonable doubt in the mind of the court, I must first determine if I believe his explanation.

I must state clearly that I do not. Accused person did not show himself as a credible person. He could not admit basic truths and easily tried to justify his untruths. To begin with, right at the commencement of cross examination by prosecution at page 69 and 71 of the record of proceedings, he was asked:

Q: How old are you?

A: 21 years

Q: Can you tell the court your date of birth?

A: 2001 but I cannot tell the day and month.

Q: On 1st November, 2021, you gave a statement at the police station and gave your age to the police. Is that correct?

A: Yes, please.

Q: You gave your age as 21 years.

A: I was 21 years when I was arrested but I turned 22 years on 31st December, 2022 and I would be 23 years this year on 31st December, 2023.

Q: You just told the court that you were born in 2001 but cannot tell the day and month and now you are saying you were born on 31stDecember.

A: I called my mother to ask and she told me.

Q: How many witnesses did prosecution call in support of its case?

A: Two

Q: I put it to you that we called four witnesses.

A: I saw the CID and Sylvester Adofo and also the complainant and his wife. If they are all included, then they are 4.

Accused person was clearly being untruthful to this court on such a simple matter as his age and date of birth. He was also not being truthful as to the fact of the number of witnesses even though he had been in court on all adjourned dates and from his last answer, could describe these witnesses.

Again, although the accused person had stated in his investigation caution statement in chief that Gideon was his friend for about two years and proceeded to state where he knew him and where they last met, in his evidence in chief, he had sought to distance himself from the said Gideon being his friend by saying that he only knows him and sometimes sees him.

In the case of ***State v. Otchere [1963] GLR 463***, it was held that "*a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit. Such evidence cannot be regarded to be of any importance in the light of the previous contradictory statement, unless the witness is able to give a reasonable explanation for the contradiction''*.

Aside being economical with the truth, accused person had also exaggerated facts. In his evidence in chief, he had said that he was arrested and detained at the Baatsona police station for three or four days without any statement being taken from him. He maintained this claim despite the fact that his investigation caution statement, further caution statement both bear out the claim that he was taken to the Dawhenya Police station on the 1st of November, 2021----two days after his arrest.

Again, he had said in his evidence in chief that an identification parade was conducted at the Dawhenya police station about four days after his detention. His own EXHIBITS show that his investigation caution statement was taken on the 1st of November and the identification parade held on the 3rd of November, 2021 after which a statement was taken from him that very day.

That means that the time period between his statement which he says was taken on the same date he was detained at the Dawhenya Police Station and the identification parade was within 48 hours or two days. That is not the same as four days as accused person wants this court to believe per paragraph 17 of his evidence in chief.

On the second ground of whether or not the accused person's explanation is reasonably probable, I find that it is not. The evidence of accused person and his witness is that according to the police, accused was arrested because he knows the whereabouts of Gideon. According to the accused himself at paragraph 15 of his evidence in chief, the

CID told him that if he does not take him to the said Gideon, he would add him as an accomplice.

If accused person's claim is reasonable, then a reasonable man would expect that immediately he gave his statement and mentioned 'Nhyiraba Spot' as where the police could find the said Gideon, then the police would follow up on the lead and not charge the accused person.

Yet, the accused person wants this court to believe that even after he had volunteered information as to the whereabouts of Gideon which he says was the primary reason for his arrest, he was still charged with the offence of robbery by the police and the police also did not take any interest in following up on his lead even though the said Gideon is on the police wanted list just like the accused person himself was.

The witness for accused person was not convincing in anyway. Although she claimed to be the wife of the accused person, she did not know basic facts such as the age of the accused person and how old he was when they celebrated their marriage. I found her evidence of very little evidential value.

For instance, under cross examination by prosecution at page 76 of the record of proceedings, she had answered;

Q: How old are you?
A: 27 years.
Q: How old is your husband, the accused person?
A: 23 years.
Q: Your husband told the court that he is 22 years and you are saying 23 years. Who is telling the court the truth?
A: The accused person.

Q: You said that you have been married for five years in paragraph 2 of your evidence in chief.
A: Yes, my lady.
Q: So, do you want to tell the court that your husband was 16 years when he married you?
A: I did not ask him of his age.

Accused person had insisted that the identification parade was wrongly conducted and his identification was a mistake. I extensively analysed the process of identifying the accused person and found that PW1 and PW2 had positively identified him.

Although accused person had sought to put forth a claim that PW1 had communicated with PW2 after he identified him and before she came to identify him, he shot himself in the foot under cross examination when he was asked;

Q: And after P.W.1 identified you, he left the station and went outside. He never had any communication with P.W.2 before she identified you and so there was no interaction between them.
A: That is not so. P.W.1 entered the room and told P.W.2 that I was the one wearing the jalabia and that is why she was able to point me out when she came.
Q: Were you in the room with them?
A: No. But we stood opposite to them. The place is open. You only stop seeing them when they enter the room.

From his own answers, if one could not see anyone after they enter that room, how was he able to see and hear PW1 identifying him to PW2 if indeed he entered the room? In any case, I do not believe his claim that this is how the identification parade was done. If indeed, PW1 and the investigator had assisted PW2, then the most logical thing would be for the accused person to be made to remain in the very clothes that he was in when PW1 identified him.

Between PW1 and PW2 and the accused person, I believe the evidence of PW1 and PW2 that the identification parade was conducted in a clean manner that left no room for them to communicate or see each other during the process. The fact that soon after the incident, when PW3 was paraded in a similar identification parade, they had not pointed him out as part of the robbers means that they were not out simply to point at anybody as the perpetrator of the crime.

They had both carefully identified the accused person even after his clothing and standing positions were changed more than a year after the commission of the crime. They identified him by his physical features as well as his voice as according to both PW1 and PW2, he had spoken to them during the robbery and neither he nor his accomplice were masked.

I find the accused person's denial, like a man drowning at sea, to be an attempt to grasp at straws and planks and anything at all to save his life.

The various inconsistencies and omissions in his investigation caution statement and in his evidence in chief before this court also do not help his case. I accept the principle in the case of ***Munkaila v. The Republic [1995-96] 1 GLR 367, in which AIKINS JSC*** reading the judgment of the court held that "when an accused person took refuge in telling lies before a trial court, the only inference of his behaviour was that he had a guilty mind and wanted to cover up''.

I thus find that I neither accept his explanation, nor find it to be reasonably probable. I have combed through the entire evidence on record and it does not raise any defence in favour of the accused person.

Consequently, at the close of the trial and after a careful examination of the evidence on record, I hereby find that prosecution has proven the guilt of the accused person beyond reasonable doubt and hereby convict him on both counts.

PRE SENTENCING TRIAL

By Court: Prosecution, is he known

Prosecution: No, My Lord

By Court: Were any of the items recovered and if so in what state were they recovered?

Prosecution: None of the items were recovered even the money

By Court: PW1 and PW2, would you like to give a victim impact statement

PW1

My lord, the laptop that was taken had a lot of information about my work and that affected me. Again, the money that was stolen also affected my finance.

PW2

The trauma that I went through during the robbery is such that I cannot sleep at night. My husband – PW.1 can testify to that. The children although they were asleep during the incident, the next morning when people kept coming around, they got to know of what happened and so they also cannot sleep on their own, now out of fear. Every night, we all have to pack ourselves in one room to sleep. That is all.

By Court: Counsel, any grounds of mitigation?

Counsel for convict:

My lord, indeed I would urge the court not to consider what complainant told the court. The aggravating factors should be gleaned from the records and not what the person says. Indeed the curtains has been drawn and we have been convicted.

There is evidence that convict is married and has children. There are many women who do not even know the size of the penis of their husbands. The court should slap us with the minimum punishment. Throughout the trial, the convict has been calm and submissive and has been very remorseful – in as much as we are convinced he never committed any offence.

At his age and with his wife and children and if he is incarcerated for a long time, he would be worse off – knowing what has happened to others. We pray accordingly.

SENTENCING

In his commission of the offences, convict had used a knife to threaten PW1 and PW2, particularly PW2. A knife is an offensive weapon. Robbery by the use of an offensive weapon carries with it a minimum punishment of fifteen (15) years imprisonment. There is no ceiling as to the maximum years of imprisonment. That means even if a court wants to impose a lenient sentence, it cannot go beyond the minimum fifteen year term of imprisonment.

In sentencing the convict, I must take into account both aggravating and mitigating circumstances. The convict had taken prosecution through a full trial and had at no point in the trial exhibited any remorse for his actions.

In mitigation, he is a first time offender. He is also a young man of less than twenty five years. He has a child whom he is responsible for together with DW1. It is essential that any term of imprisonment should not cut off the remainder of his active years but

rather give him an opportunity to reform and return to society to contribute his quota to national development.

I have also taken into account the time spent by convict in custody during the trial of this case. Convict is sentenced to a seventeen (17) year term of imprisonment on count one and a further seventeen (17) year term of imprisonment on count two. The terms are to run concurrently.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

ANTHONY ADU NKETIAH WITH VALENTINA KWARTENG FOR THE ACCUSED PERSON PRESENT